

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3:19-CV-00496-LRH-CLB

ORDER

11 v.

12 9mm machinegun manufactured by
13 Parabellum Combat Systems/ Silver Bullet
14 Gun Works (Trigger pack), Model PCS-9,
15 Serial No. 50799;
16 9mm machinegun manufactured by Group
17 Industries/ Silver Bullet Gun Works (bolt),
18 Model UZI, Serial No. 790111; 9mm
19 machinegun manufactured by Glock/ Silver
20 Bullet Gun Works, Model 19, Serial No.
21 YDE825;

22 .223 caliber machinegun manufactured by
23 Heckler & Koch / Silver Bullet Gun Works,
24 Model MP5, Serial No. 009;

25 .223 caliber machinegun manufactured by
26 Heckler & Koch/ Silver Bullet Gun Works,
27 Model HK93, Serial No. 507;

28 9mm machinegun manufactured by Silver
29 Bullet Gun Works, Model PPSH-41, Serial
No. 417;

30 9mm machinegun manufactured by MK
31 Arms/ Silver Bullet Gun Works, Model
32 MK760, Serial No. C0067;

33 7.62 caliber machinegun manufactured by
34 Silver Bullet Gun Works, Model AK-47,
35 Serial No. 013118;

36 7.62 caliber machinegun manufactured by
37 Silver Bullet Gun Works, Model KRINKOV,
38 Serial No. KL507;

39 .223 caliber machinegun manufactured by
40 Bushmaster/ Silver Bullet Gun Works, Model
41 XM15E2S, Serial No. L420020;

1 7.62 caliber machinegun manufactured by
2 Jaco Sales Co. LLC, Model RPD, Serial No.
3 0218;
4 8mm machinegun manufactured by William
5 D Bowman Law Enforcement
6 Technology/LET, Model MADSEN1904,
7 Serial No. 523;
8 .45 caliber machinegun manufactured by
9 William D Bowman Law Enforcement
10 Technology/LET, Model M1A1, Serial No.
11 1002;
12 .308 caliber machinegun manufactured by
13 Leonard, Benny W; Benny Leonard, Model
14 MG42, Serial No. 1924;
15 8mm machinegun manufactured by Jaco Sales
16 Co. LLC, Model MG34, Serial No. 8904;
17 5.56 caliber machinegun manufactured by
18 Jaco Sales Co. LLC, Model MARCK15,
19 Serial No. 30090;
20 9mm machinegun manufactured by Silver
21 Bullet Gun Works, Model SIG MPX, Serial
22 No. 103117; .308 caliber machinegun
23 manufactured by Jaco Sales Co. LLC, Model
24 L1A1SPORTER, Serial No. 124852;
25 .223 caliber machinegun manufactured by
26 D.S. Arms Inc., Model M249, Serial No.
27 SAW007;
28 5.45 caliber machinegun manufactured by
 Jaco Sales Co. LLC, Model AUSA, Serial No.
 AA5597;
 7.62 caliber machinegun manufactured by
 Jaco Sales Co. LLC, Model AUSA, Serial No.
 AA5654;
 7.62 caliber machinegun manufactured by
 SAS Products, Model PKM, Serial No.
 BE412;
 9mm machinegun manufactured by Jaco Sales
 Co. LLC, Model M31SA, Serial No.
 H002448;
 9mm machinegun manufactured by Jaco Sales
 Co. LLC, Model NDS1948, Serial No.
 IDF0502;
 .30 caliber machinegun manufactured by Jaco
 Sales Co. LLC, Model M2, Serial No. J7001;
 7.62 caliber machinegun manufactured by
 JCD Tactical Law Enforcement Sales, Model
 1919A4, Serial No. JCDA4-001;
 9mm machinegun manufactured by Jaco Sales
 Co. LLC, Model M45, Serial No. K1308;
 7.62 caliber machinegun manufactured by
 Jaco Sales Co. LLC, Model M60, Serial No.
 M1302;
 7.62 caliber machinegun manufactured by
 Jaco Sales Co. LLC, Model MAG58, Serial
 No. MAG1131;

7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model DP28, Serial No. SMG10-DP041;
.303 caliber machinegun manufactured by Jaco Sales Co. LLC, Model BRENMK1, Serial No. SMG12-028;
9mm machinegun manufactured by Jaco Sales Co. LLC, Model STERLINGSP0, Serial No. WLA210-C04185; and
7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model PPS43C, Serial No. KT01312P,

Defendants.

This civil forfeiture case is before the Court on a Motion for Default Judgment of Forfeiture and Final Judgment by the United States (“the government”) for the forfeiture against the interest of Tina Clare, Michael Clare, and all persons or entities who may claim interest in: the 9mm machinegun manufactured by Parabellum Combat Systems/ Silver Bullet Gun Works (Trigger pack), Model PCS-9, Serial No. 50799; 9mm machinegun manufactured by Group Industries/ Silver Bullet Gun Works (bolt), Model UZI, Serial No. 790111; 9mm machinegun manufactured by Glock/ Silver Bullet Gun Works, Model 19, Serial No. YDE825; .223 caliber machinegun manufactured by Heckler & Koch / Silver Bullet Gun Works, Model MP5, Serial No. 009; .223 caliber machinegun manufactured by Heckler & Koch/ Silver Bullet Gun Works, Model HK93, Serial No. 507; 9mm machinegun manufactured by Silver Bullet Gun Works, Model PPSH-41, Serial No. 417; 9mm machinegun manufactured by MK Arms/ Silver Bullet Gun Works, Model MK760, Serial No. C0067; 7.62 caliber machinegun manufactured by Silver Bullet Gun Works, Model AK-47, Serial No. 013118; 7.62 caliber machinegun manufactured by Silver Bullet Gun Works, Model KRINKOV, Serial No. KL507; .223 caliber machinegun manufactured by Bushmaster/ Silver Bullet Gun Works, Model XM15E2S, Serial No. L420020; 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model RPD, Serial No. 0218; 8mm machinegun manufactured by William D Bowman Law Enforcement Technology/LET, Model MADSEN1904, Serial No. 523; .45 caliber machinegun manufactured by William D Bowman Law Enforcement Technology/LET, Model M1A1, Serial No. 1002; .308 caliber machinegun manufactured by Leonard, Benny W; Benny Leonard, Model MG42, Serial No. 1924; 8mm

1 machinegun manufactured by Jaco Sales Co. LLC, Model MG34, Serial No. 8904; 5.56 caliber
2 machinegun manufactured by Jaco Sales Co. LLC, Model MARCK15, Serial No. 30090; 9mm
3 machinegun manufactured by Silver Bullet Gun Works, Model SIG MPX, Serial No. 103117; .308
4 caliber machinegun manufactured by Jaco Sales Co. LLC, Model L1A1SPORTER, Serial No.
5 124852; .223 caliber machinegun manufactured by D.S. Arms Inc., Model M249, Serial No.
6 SAW007; 5.45 caliber machinegun manufactured by Jaco Sales Co. LLC, Model AUSA, Serial
7 No. AA5597; 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model AUSA, Serial
8 No. AA5654; 7.62 caliber machinegun manufactured by SAS Products, Model PKM, Serial No.
9 BE412; 9mm machinegun manufactured by Jaco Sales Co. LLC, Model M31SA, Serial No.
10 H002448; 9mm machinegun manufactured by Jaco Sales Co. LLC, Model NDS1948, Serial No.
11 IDF0502; .30 caliber machinegun manufactured by Jaco Sales Co. LLC, Model M2, Serial No.
12 J7001; 7.62 caliber machinegun manufactured by JCD Tactical Law Enforcement Sales, Model
13 1919A4, Serial No. JCDA4-001; 9mm machinegun manufactured by Jaco Sales Co. LLC, Model
14 M45, Serial No. K1308; 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model
15 M60, Serial No. M1302; 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model
16 MAG58, Serial No. MAG1131; 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC,
17 Model DP28, Serial No. SMG10-DP041; .303 caliber machinegun manufactured by Jaco Sales
18 Co. LLC, Model BRENMK1, Serial No. SMG12-028; 9mm machinegun manufactured by Jaco
19 Sales Co. LLC, Model STERLINGSP, Serial No. WLA210-C04185; and 7.62 caliber
20 machinegun manufactured by Jaco Sales Co. LLC, Model PPS43C, Serial No. KT01312P (all of
21 which constitutes defendant property), for entry of a final judgment of forfeiture against the
22 defendant property in the above-entitled action and vesting in the United States all possessory
23 rights, all ownership rights, and all rights, titles, and interests in the defendant property. As
24 discussed below, this Court will grant the government's motion for default forfeiture.

25 **I. Factual Background and Procedural History**

26 The Gun Control Act ("GCA"), 18 U.S.C. § 921(a)(23), and the National Firearms Act
27 ("NFA"), 26 U.S.C. § 5845(b), provide the following definition for the term "machinegun":
28

“[M]achinegun” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

The GCA provides that “it shall be unlawful for any person to transfer or possess a machinegun.” 18 U.S.C. § 922(o)(1). The law exempts from that proscription any “possession. . . under the authority of, the United States or any department or agency thereof.” 18 U.S.C. § 922(o)(2)(A). The GCA and Code of Federal Regulations require any person wishing to manufacture or deal in firearms (including machineguns) to obtain and maintain a Federal Firearms License (“FFL”) from the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). 18 U.S.C. § 923(a); 27 C.F.R. §§ 478.41(a), 44(a). FFL holders are required to “execute and file with ATF prior to the expiration of [a] license an application for a license renewal. . . in accordance with the instructions on the form, and the required fee.” 27 C.F.R. § 478.45. If a licensee has failed to renew an FFL, the person must file a new FFL application and obtain a new license to continue to legally engage in the business of dealing and manufacturing firearms. 27 C.F.R. § 478.44(a)(1).

The GCA makes it unlawful for any person to “engage in the business of. . . manufacturing or dealing in firearms” unless the person is a “licensed manufacturer or licensed dealer.” 18 U.S.C. § 922(a)(1)(A). The GCA defines “licensed manufacturer” and “licensed dealer,” respectively, as any manufacturer or dealer “who is licensed under the provisions of” the GCA. 18 U.S.C. § 921(a)(10)-(11). The GCA subjects to forfeiture any firearm involved in a willful violation of the GCA or the regulations promulgated under the GCA. 18 U.S.C. § 924(d)(1).

The NFA requires that any manufacturer or dealer of a machinegun pay an annual special occupational tax (“SOT”) on or before July 1 of each year. 26 U.S.C. § 5801(a). Failure to pay the SOT can result in fines, financial penalties, and criminal liability. 26 U.S.C. §§ 5871, 6601, 6651; 27 C.F.R. § 479.48. The NFA prohibits any person from “engaging in business” as a covered firearms manufacturer or dealer “without having paid” the SOT. 26 U.S.C. § 5861(a). An individual who engages in such conduct may be fined and/or incarcerated. 26 U.S.C. § 5871. The

1 NFA also subjects to forfeiture any firearm involved in a violation of a provision of the NFA. 26
2 U.S.C. § 5872(a).

3 On June 14, 2012, the ATF issued FFL number 9-88-031-07-8G-02687 to Tina Clare, Sole
4 Proprietor (“TCSP”). (ECF No. 1 at 9). Tina Clare was also associated with three additional FFLs:
5 Tina Clare Enterprises LLC (“TCE”) (9-88-031-07-0F-04244), Silver Bullet Gun Works
6 (“SBGW”) (9-88-031-07-9E-04638), and Big Shot Indoor Range LLC (“BSIR”) (9-88-031-07-
7 0L-04949). (*Id.*) All four FFLs were manufacturing-and-dealing licenses. (*Id.*) From August 2014
8 to February 2018, TCSP filed numerous manufacturing and incoming transfer forms with the ATF
9 for the following firearms: (1) 9mm machinegun manufactured by Parabellum Combat Systems/
10 Silver Bullet Gun Works (Trigger pack), Model PCS-9, Serial No. 50799, Form 2 on May 31,
11 2017; (2) 9mm machinegun manufactured by Group Industries/ Silver Bullet Gun Works (bolt),
12 Model UZI, Serial No. 790111, Form 2 on May 31, 2017; (3) 9mm machinegun manufactured by
13 Glock/ Silver Bullet Gun Works, Model 19, Serial No. YDE825, Form 2 on December 12, 2016;
14 (4) .223 caliber machinegun manufactured by Heckler & Koch / Silver Bullet Gun Works, Model
15 MP5, Serial No. 009, Form 2 on December 12, 2016; (5) .223 caliber machinegun manufactured
16 by Heckler & Koch/ Silver Bullet Gun Works, Model HK93, Serial No. 507, Form 2 on July 6,
17 2017; (6) 9mm machinegun manufactured by Silver Bullet Gun Works, Model PPSH-41, Serial
18 No. 417, Form 2 on July 6, 2017; (7) 9mm machinegun manufactured by MK Arms/ Silver Bullet
19 Gun Works, Model MK760, Serial No. C0067, Form 2 on January 6, 2018; (8) 7.62 caliber
20 machinegun manufactured by Silver Bullet Gun Works, Model AK47, Serial No. 013118, Form 2
21 on January 31, 2018; (9) 7.62 caliber machinegun manufactured by Silver Bullet Gun Works,
22 Model KRINKOV, Serial No. KL507, Form 2 on June 15, 2017; (10) .223 caliber machinegun
23 manufactured by Bushmaster/ Silver Bullet Gun Works, Model XM15E2S, Serial No. L420020,
24 Form 2 on July 23, 2014; (11) 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC,
25 Model RPD, Serial No. 0218, Form 3 on July 1, 2014; (12) 8mm machinegun manufactured by
26 William D Bowman Law Enforcement Technology/LET, Model MADSEN1904, Serial No. 523,
27 Form 3 on August 31, 2014; (13) .45 caliber machinegun manufactured by William D Bowman
28 Law Enforcement Technology/LET, Model M1A1, Serial No. 1002, Form 3 on January 24, 2015;

1 (14) .308 caliber machinegun manufactured by Leonard, Benny W; Benny Leonard, Model MG42,
2 Serial No. 1924, Form 3 on September 28, 2014; (15) 8mm machinegun manufactured by Jaco
3 Sales Co. LLC, Model MG34, Serial No. 8904, Form 3 on September 28, 2014; (16) 5.56 caliber
4 machinegun manufactured by Jaco Sales Co. LLC, Model MARCK15, Serial No. 30090, Form 3
5 on December 2, 2014; (17) 9mm machinegun manufactured by Silver Bullet Gun Works, Model
6 SIG MPX, Serial No. 103117, Form 3 on January 20, 2016; (18) .308 caliber machinegun
7 manufactured by Jaco Sales Co. LLC, Model L1A1SPORTER, Serial No. 124852, Form 3 on
8 September 28, 2014; (19) .223 caliber machinegun manufactured by D.S. Arms Inc., Model M249,
9 Serial No. SAW007, Form 3 on September 28, 2014; (20) 5.45 caliber machinegun manufactured
10 by Jaco Sales Co. LLC, Model AUSA, Serial No. AA5597, Form 3 on December 14, 2014; (21)
11 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model AUSA, Serial No. AA5654,
12 Form 3 on January 14, 2015; (22) 7.62 caliber machinegun manufactured by SAS Products, Model
13 PKM, Serial No. BE412, Form 3 on September 28, 2014; (23) 9mm machinegun manufactured by
14 Jaco Sales Co. LLC, Model M31SA, Serial No. H002448, Form 3 on September 28, 2014; (24)
15 9mm machinegun manufactured by Jaco Sales Co. LLC, Model NDS1948, Serial No. IDF0502,
16 Form 3 on September 28, 2014; (25) .30 caliber machinegun manufactured by Jaco Sales Co. LLC,
17 Model M2, Serial No. J7001, Form 3 on September 14, 2014; (26) 7.62 caliber machinegun
18 manufactured by JCD Tactical Law Enforcement Sales, Model 1919A4, Serial No. JCDA4-001,
19 Form 3 on September 28, 2014; (27) 9mm machinegun manufactured by Jaco Sales Co. LLC,
20 Model M45, Serial No. K1308, Form 3 on February 10, 2017; (28) 7.62 caliber machinegun
21 manufactured by Jaco Sales Co. LLC, Model M60, Serial No. M1302, Form 3 on August 14, 2014;
22 (29) 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model MAG58, Serial No.
23 MAG1131, Form 3 on September 28, 2014; (30) 7.62 caliber machinegun manufactured by Jaco
24 Sales Co. LLC, Model DP28, Serial No. SMG10-DP041, Form 3 on August 14, 2014; (31) .303
25 caliber machinegun manufactured by Jaco Sales Co. LLC, Model BRENMK1, Serial No. SMG12-
26 028, Form 3 on September 28, 2014; (32) 9mm machinegun manufactured by Jaco Sales Co. LLC,
27 Model STERLINGSP0, Serial No. WLA210-C04185, Form 3 on September 28, 2014; and (33)
28 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model PPS43C, Serial No.

1 KT01312P, Form 3 on January 29, 2015. (*Id.* at 10–13). All thirty-three items listed are considered
 2 “machineguns” as defined by the GCA and NFA and as registered by TCSP with ATF. (*Id.*) None
 3 of the thirty-three machineguns listed were transferred to or possessed by TCSP or its principals
 4 prior to May 19, 1986. (*Id.*)

5 TCSP renewed its FFL in 2015, which satisfied TCSP’s FFL-renewal obligation through
 6 June 2018. (ECF No. 1 at 13). TCSP, however, has not renewed its FFL since 2015, and therefore
 7 TCSP’s FFL expired on July 1, 2018. (*Id.*). The government alleges that because of her past
 8 conduct, Tina Clare, as a responsible party for TCSP, knew or had reason to know that TCSP
 9 needed to renew its FFL every three years to continue to manufacture or deal in firearms, including
 10 the thirty-three machineguns listed above. (*Id.*) Between 2014 and 2017, TCSP paid its annual
 11 SOT, with its last payment occurring in July 2017. (ECF No. 1 at 13). The July 2017 SOT payment
 12 covered its obligations through June 2018; however, with no other payments made after July 2017,
 13 all thirty-three machineguns held by TCSP became contraband on July 1, 2018. (*Id.*)

14 In December 2018, ATF obtained information that SBGW had allegedly moved to a new
 15 business premise without updating its FFL. (ECF No. 1 at 14). In January 2019, ATF confirmed
 16 that SBGW was not operating from its licensed location, which lead to an investigation revealing
 17 that the FFL of TCSP had expired and that fifty-two NFA firearms were registered to that FFL.
 18 (*Id.*) On March 6, 2019, ATF personnel arrived at SBGW and BSIR (which shared an address),
 19 where a special agent identified thirty-three machineguns held under TCSP’s expired FFL and
 20 were on the premise for rental at BSIR. (*Id.*). ATF seized the machineguns because TCSP’s FFL
 21 had not been renewed since 2015 and the SOT had not been paid since 2017. (*Id.*). Tina Clare was
 22 on premise when ATF seized the machineguns, and she acknowledged that she did not timely
 23 submit the FFL renewal for TCSP. (*Id.*)

24 The government asserts that at the time of seizure, Tina Clare, individually and through
 25 her FFL entities, possessed the machineguns and was engaged in the business of manufacturing
 26 and dealing in those machineguns. (ECF No. 1 at 14). It points to the following facts to support its
 27 assertion: (1) TCSP filed Form 2s for the manufacture of items 1-10, variously, between 2014 and
 28 2018; (2) machineguns, registered to TCSP, were actively being displayed behind the counter of,

1 and rented for use at, BSIR, which held an FFL also associated with Tina Clare, and (3) Tina
 2 Clare—based on the submissions made with her administrative claim—intended and took initial
 3 steps to transfer machineguns from TCSP to SBGW. (*Id.*)

4 On May 1, 2019, ATF sent Tina Clare a Notice of Seizure of Property and Initiation of
 5 Administrative Forfeiture Proceedings, which initiated forfeiture proceedings within 120 days of
 6 the seizure. (ECF No. 1 at 15). When filing her administrative claim on May 18, 2019, Tina Clare
 7 attached ATF Form 3 Applications, dated November 26, 2018, to transfer all the machineguns
 8 other than Serial Numbers KL507 (item 9) and K1308 (item 27) from TCSP to SBGW. The
 9 government claims that ATF has no record of receiving and did not approve the Form 3s. (*Id.*).
 10 Additionally, the government contends that ATF would not have approved of those Form 3s
 11 because they would have been submitted after July 1, 2018, which was when the machineguns
 12 became contraband. (*Id.* at 12). The thirty-three machineguns are the entirety of the defendant
 13 property. (*Id.*)

14 The government brought this civil forfeiture action on August 15, 2019, asserting that the
 15 defendant property: (1) are firearms or ammunition involved in or used in any willful violation of
 16 the GCA and any rule or regulation promulgated thereunder, here a violation of 18 U.S.C. § 922(o)
 17 and is subject to forfeiture to the United States pursuant to 18 U.S.C. § 924(d)(1), and (2) are
 18 firearms involved in any violation of the provisions of the NFA, here a violation of 26 U.S.C. §§
 19 5801(a), 5861(a), and 5871, and is subject to forfeiture to the United States pursuant to 26 U.S.C.
 20 § 5872(a). (ECF No. 1 at 15). On August 23, 2019, the Court entered an Order for Summons and
 21 Warrants of Arrest in Rem for the Property and Notice (ECF No. 3), and the Clerk issued the
 22 Summons and Warrants of Arrest in Rem (ECF No. 4). Pursuant to the order, the following
 23 documents were served on the defendant property and all persons or entities who may claim an
 24 interest in the defendant property: the complaint (ECF No. 1), the order (ECF No. 3), the
 25 summonses and warrants (ECF No. 4), and the Notice of Complaint for Forfeiture. (ECF No. 10
 26 at 12) Notice was published according to law. (*Id.*)

27 Pursuant to Supplemental Rule for Admiralty or Maritime Claims and Asset Forfeiture
 28 Actions G(5), all persons interested in the defendant property were required to: (1) file a verified

1 claim, setting forth the person's interest in the property that (a) identified the specific property
2 claimed, (b) identified the claimant and stated the claimant's interest in the property, and (c) was
3 signed by the claimant under penalty of perjury pursuant to 28 U.S.C. § 1746; (2) file the verified
4 claim with the Clerk of the above-entitled Court no later than 35 days after the notice is sent or, if
5 direct notice was not sent, no later than 60 days after the first day of publication on the official
6 internet government forfeiture site, www.forfeiture.gov; (3) file an answer to the complaint for
7 Forfeiture in Rem or a motion under Rule 12 with the Clerk of the Court no later than 21 days after
8 filing the verified claim, and (4) serve a copy of the verified claim and the answer at the time of
9 each filing on James A. Blum, Assistant United States Attorney, 501 Las Vegas Boulevard South,
10 Suite 1100, Las Vegas, Nevada 89101. (ECF No. 10 at 12–13).

11 On September 18, 2019, the United States Attorney's Office served the complaint, the
12 Order for Summons and Warrants of Arrest in Rem for the Property and Notice, the Summons
13 and Warrants of Arrest in Rem for the Property, and the Notice of Complaint for Forfeiture and
14 Arrest on Tina Clare by certified return receipt mail and regular mail. (ECF No. 10 at 14). The
15 certified mail was returned, but the regular mail was not. (*Id.*) Public notice of the forfeiture action
16 and arrest was given to all persons and entities by publication via the official internet government
17 forfeiture site, www.forfeiture.gov, from September 19 through October 18, 2019. (*Id.* at 13).

18 On December 10, 2019, ATF served the Complaint, the Order for Summons and
19 Warrants of Arrest in Rem for the Property and Notice, the Summons and Warrants of Arrest in
20 Rem for the Property, and the Notice of Complaint for Forfeiture and Arrest by executing them on
21 the defendant property. (ECF No. 10 at 13). On January 21, 2020, the United States filed a motion
22 for entry of clerk's default against the defendant property, Tina Clare, Michael Clare, and all
23 persons or entities who may claim an interest in the defendant property. (*Id.* at 14). On January 22,
24 the Clerk of the Court entered default. (*Id.*) Neither Tina Clare nor Michael Clare are minors or
25 incompetent persons and are not in the military service purview of the Servicemen's Civil Relief
26 Act of 2003. (*Id.*) No person or entity has filed a claim, answer, or responsive pleading with the
27 time permitted by 18 U.S.C. § 983(a)(4) and Federal Rule of Civil Procedure Supplement Rule
28 G(4) and (5).

II. Legal Standard

Civil forfeiture cases have five requirements that must be satisfied to complete a default:

(1) the judgment sought does not differ in kind from, or exceed in amount, what is demanded in the pleadings pursuant to Fed. R. Civ. P. 54(c); (2) the Clerk of the Court has entered default for a sum certain pursuant to Fed. R. Civ. P. 55(b)(1); (3) publication and personal service were completed pursuant to Fed. R. Civ. P. Supp. Rule G(4); (4) the complaint is legally sufficient to support a reasonable belief that the government will be able to meet its burden of proof pursuant to Fed. R. Civ. P. Supp. Rule G(2), *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988), and (5) no person has filed a claim or the claim(s) have been resolved under 18 U.S.C. § 983(a)(4)(A) or Fed. R. Civ. P. Supp. Rule G(5). *United States v. \$16,000.00 in United States Currency*, No. 3:19-CV-319-MMD-WGC, 2020 WL 1436986, at *4 (D. Nev. Mar. 24, 2020).

For civil cases that do not directly address forfeiture, there are seven factors that the court must consider before entry of default:

(1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

18 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986); *SATA GmbH & Co. KG v. USA Italco*
19 *Int'l Ltd.*, No. 3:18-CV-00351-MMDWGC, 2019 WL 4601513, at 3 (D. Nev. Sept. 20, 2019). For
20 purposes of a default judgment, the well-pleaded allegations of the complaint are taken as true.
21 *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 918 (9th Cir. 1987) Furthermore, “[t]he district
22 court’s decision whether to enter a default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616
23 F.2d 1089, 1092 (9th Cir. 1980).

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III. Discussion

A. Forfeiture Requirements for Default

1. Judgment Sought

Pursuant to Fed. R. Civ. P. 54(c) and 55(b), the judgment by default does not “differ in kind from or exceed [the] amount” of relief listed in the complaint for forfeiture. (ECF No. 1 at 16).

2. Default and Entry of Default

As shown above, the United States requested entry of Clerk's Default against the defendant property in the above-entitled action, Tina Clare, Michael Clare, and all persons or entities who may claim an interest in the defendant property in the above-entitled action. (ECF No. 8 at 3). The Clerk of Court entered default as requested. (ECF No. 9 at 1).

3. Notice

Pursuant to Fed. R. Civ. P. Supp. Rule G(4)(a)(iv)(C), the United States published notice via the official internet government forfeiture site, www.forfeiture.gov, for thirty consecutive days from September 19 through October 18, 2019. (ECF No. 5 at 3). Pursuant to Fed. R. Civ. P. Supp. Rule G(4)(b), the United States served the complaint, the Order for Summons and Warrants of Arrest in Rem for the Property and Notice, the Summons and Warrants of Arrest in Rem for the Property, and the Notice of Complaint for Forfeiture and Arrest on all known potential claimants. (ECF No. 7).

4. Legal Sufficiency of the Complaint

The complaint filed in this action was verified. (ECF No. 1 at 17). The Court has subject matter jurisdiction under 19 U.S.C. §§ 1603, 1608, and 1610; Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (Fed. R. Civ. P. Supp. Rule) C, E, and G; 18 U.S.C. §§ 924(d) and 983; 26 U.S.C. § 5872(a); and 28 U.S.C. §§ 1345, 1355, and 1395 because (1) the United States of America commenced this civil in rem action; (2) the acts and omissions giving rise to this forfeiture occurred in this judicial district; (3) the forfeiture proceeding accrues in this judicial district, and (4) the defendant property was found in this judicial district. (ECF No. 1 at 3).

The Court has *in rem* jurisdiction over the defendant property because the court has signed an Order for Summons and Warrants of Arrest in Rem for the defendant property and the Clerk of the Court issued Summons and Warrants of Arrest in Rem for the defendant property (ECF Nos. 3, 4). *See United States v. Liquidators of European Fed. Credit Bank*, 630 F.3d 1139, 1149 (9th Cir. 2011) (“Civil forfeiture is an *in rem* proceeding against the *res*, on the legal fiction that the property itself is ‘guilty.’”). Venue is proper pursuant to 28 U.S.C. § 1395 and Supplemental Rules G(1) and C(2)(c) because (1) the defendant property was initially found in this judicial district and (2) the defendant property remains in this judicial district. (ECF No. 1 at 3).

5. Status of Potential Claimants

No person or entity has filed a claim, and the time to file a claim has passed. Therefore, each of the five civil forfeiture requirements have been met.

B. Civil Requirements for Default

1. Prejudice to the Plaintiff

The government would be prejudiced if it were to try this case rather than obtain a default judgment because a trial would require the additional expenditure of human and financial resources. These expenses and efforts are unnecessary here because the complaint provided sufficient evidence of the status and forfeitability of the property, and that evidence is uncontested by Tina Clare and Michael Clare. *See United States v. \$150,990.00 in U.S. Currency*, No. 2-12-CV-01014-JAD, 2014 WL 6065815, at *2 (D. Nev. Nov. 10, 2014), (“[T]he government would be prejudiced by having to expend additional resources litigating an action that appears to be uncontested. This factor favors default judgment.”).

2. Sufficiency of the Claims and Complaint

As shown in the statement of the case above, the government has a clear case against the property, with the government's complaint sufficiently relating the facts of the case.

3. Money at Stake

The value of the property at stake is \$100 per machinegun for a total of \$3,300, as alleged in the complaint (ECF No. 1 at 7), and the property is forfeitable pursuant to 18 U.S.C. § 924(d)(1) and 26 U.S.C. § 5872(a). The government's complaint alleges the serious crime of use or

1 involvement of any firearm or ammunition in any willful violation of the Gun Control Act, and
 2 the involvement of any firearm in any violation of the National Firearms Act. (ECF No. 10 at 17).

3 4. Disputes of Material Fact

4 “Upon entry of default, all well-pleaded facts in the complaint are taken as true.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1177 (C.D. Cal. 2002). Default has been entered in
 5 this case, meaning that the alleged facts are not in dispute and the allegations of the complaint are
 6 established as a matter of law.

7 5. Excusable Neglect

8 The record shows that the claimants were properly served with the complaint, order,
 9 summonses and warrants, and the notice, but they failed to file a claim and answer to the complaint.
 10 (ECF No. 5 at 3). There is no evidence of any possible excusable neglect. *See United States v. \$73,982 in U.S. Currency*, No. 3:12-CV-00363-LRH-WGC, 2013 WL 6844802 (D. Nev. Dec. 19,
 11 2013) (finding that default judgment is favored when the government provides adequate service
 12 and notice to parties who have an interest in the defendant property and there is no evidence of
 13 excusable neglect.).

14 6. Public Policy

15 While cases “should be decided on their merits whenever reasonably possible,” the
 16 presence of Federal Rule of Civil Procedure 55(b) demonstrates that default judgments are
 17 permissible. *PepsiCo, Inc. v. California Security Cans*, 238 F.Supp.2d 1172, 1177 (C.D. Cal. 2002)
 18 (quoting *Eitel v. McCool*, 782 F.2d 1470, 1473 (9th Cir. 1986)). Here, the potential claimants did
 19 not file a claim or an answer to the government’s complaint, which makes a decision on the merits
 20 impractical. *Id.* Therefore, a final default judgment of forfeiture is appropriate.

21 Based on the foregoing, the Court finds that the United States has shown its entitlement to
 22 an order of default judgment as to Tina Clare, Michael Clare, and all persons or entities who may
 23 claim an interest in the defendant property and Final Judgment as to the 9mm machinegun
 24 manufactured by Parabellum Combat Systems/ Silver Bullet Gun Works (Trigger pack), Model
 25 PCS-9, Serial No. 50799; 9mm machinegun manufactured by Group Industries/ Silver Bullet Gun
 26 Works (bolt), Model UZI, Serial No. 790111; 9mm machinegun manufactured by Glock/ Silver
 27 Works (bolt), Model UZI, Serial No. 790111; 9mm machinegun manufactured by Glock/ Silver
 28 Works (bolt), Model UZI, Serial No. 790111; 9mm machinegun manufactured by Glock/ Silver

1 Bullet Gun Works, Model 19, Serial No. YDE825; .223 caliber machinegun manufactured by
2 Heckler & Koch / Silver Bullet Gun Works, Model MP5, Serial No. 009; .223 caliber machinegun
3 manufactured by Heckler & Koch/ Silver Bullet Gun Works, Model HK93, Serial No. 507; 9mm
4 machinegun manufactured by Silver Bullet Gun Works, Model PPSH-41, Serial No. 417; 9mm
5 machinegun manufactured by MK Arms/ Silver Bullet Gun Works, Model MK760, Serial No.
6 C0067; 7.62 caliber machinegun manufactured by Silver Bullet Gun Works, Model AK-47, Serial
7 No. 013118; 7.62 caliber machinegun manufactured by Silver Bullet Gun Works, Model
8 KRINKOV, Serial No. KL507; .223 caliber machinegun manufactured by Bushmaster/ Silver
9 Bullet Gun Works, Model XM15E2S, Serial No. L420020; 7.62 caliber machinegun manufactured
10 by Jaco Sales Co. LLC, Model RPD, Serial No. 0218; 8mm machinegun manufactured by William
11 D Bowman Law Enforcement Technology/LET, Model MADSEN1904, Serial No. 523; .45
12 caliber machinegun manufactured by William D Bowman Law Enforcement Technology/LET,
13 Model M1A1, Serial No. 1002; .308 caliber machinegun manufactured by Leonard, Benny W;
14 Benny Leonard, Model MG42, Serial No. 1924; 8mm machinegun manufactured by Jaco Sales
15 Co. LLC, Model MG34, Serial No. 8904; 5.56 caliber machinegun manufactured by Jaco Sales
16 Co. LLC, Model MARCK15, Serial No. 30090; 9mm machinegun manufactured by Silver Bullet
17 Gun Works, Model SIG MPX, Serial No. 103117; .308 caliber machinegun manufactured by Jaco
18 Sales Co. LLC, Model L1A1SPORTER, Serial No. 124852; .223 caliber machinegun
19 manufactured by D.S. Arms Inc., Model M249, Serial No. SAW007; 5.45 caliber machinegun
20 manufactured by Jaco Sales Co. LLC, Model AUSA, Serial No. AA5597; 7.62 caliber machinegun
21 manufactured by Jaco Sales Co. LLC, Model AUSA, Serial No. AA5654; 7.62 caliber machinegun
22 manufactured by SAS Products, Model PKM, Serial No. BE412; 9mm machinegun manufactured
23 by Jaco Sales Co. LLC, Model M31SA, Serial No. H002448; 9mm machinegun manufactured by
24 Jaco Sales Co. LLC, Model NDS1948, Serial No. IDF0502; .30 caliber machinegun manufactured
25 by Jaco Sales Co. LLC, Model M2, Serial No. J7001; 7.62 caliber machinegun manufactured by
26 JCD Tactical Law Enforcement Sales, Model 1919A4, Serial No. JCDA4-001; 9mm machinegun
27 manufactured by Jaco Sales Co. LLC, Model M45, Serial No. K1308; 7.62 caliber machinegun
28 manufactured by Jaco Sales Co. LLC, Model M60, Serial No. M1302; 7.62 caliber machinegun

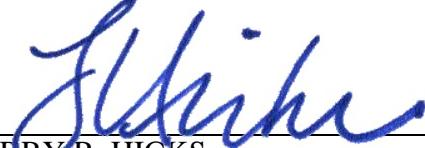
1 manufactured by Jaco Sales Co. LLC, Model MAG58, Serial No. MAG1131; 7.62 caliber
2 machinegun manufactured by Jaco Sales Co. LLC, Model DP28, Serial No. SMG10-DP041; .303
3 caliber machinegun manufactured by Jaco Sales Co. LLC, Model BRENMK1, Serial No. SMG12-
4 028; 9mm machinegun manufactured by Jaco Sales Co. LLC, Model STERLINGSP, Serial No.
5 WLA210-C04185; and 7.62 caliber machinegun manufactured by Jaco Sales Co. LLC, Model
6 PPS43C, Serial No. KT01312P.

7 **IV. Conclusion**

8 IT IS THEREFORE ORDERED that party's motion for default judgment of forfeiture and
9 for final judgment of forfeiture (ECF No. 10) is **GRANTED**. The Clerk of Court is directed to
10 enter judgment in favor of the United States.

11 IT IS SO ORDERED.

12 DATED this 9th day of July, 2020.

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14 LARRY R. HICKS
15 UNITED STATES DISTRICT JUDGE
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